



California Fair Political Practices Commission

March 21, 1988

Charles P. Scully II
300 Montgomery Street
Suite 735
San Francisco, CA 94104-1909

Re: Your Request for Advice
Our File Nos. I-88-452
and I-89-028

Dear Mr. Scully:

This is in response to your request for guidance in applying the provisions of Proposition 73¹ to the organizations you represent. Because you have not requested advice regarding a specific pending decision, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTIONS

1. Is the California Labor Federation's Committee on Political Education ("COPE") a broad based political committee?

¹ Proposition 73 was a statewide ballot measure adopted by the voters in the June 1988 primary election. The provisions of Proposition 73 amend the Political Reform Act (the "Act"), which is comprised of Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c) (3).)

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March 21, 1989
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2. If COPE receives a campaign contribution in excess of \$2,500 from any individual affiliate, is COPE permitted to use the funds in excess of the \$2,500 contribution limit?

3. May COPE use funds on hand on January 1, 1989 to support or oppose candidates for elective office?

CONCLUSIONS

1. Based on the facts provided, COPE is a broad based political committee. It may make contributions of up to \$5,000 to candidates if it has amended its statement of organization to indicate that it is a broad based political committee.

2. COPE may use the contributions received in excess of the contribution limits only if the amount in excess of the limits is earmarked by the contributor for purposes other than making contributions directly to candidates.

3. Pending further action by the Commission, COPE may not use the funds possessed on January 1, 1989 to support or oppose a candidacy for elective office, but may use those funds for any other lawful purpose.

FACTS

The California Labor Federation, AFL-CIO, is a voluntary federation of more than 100 affiliated labor organizations. The constitution of the AFL-CIO requires each affiliate to make a per capita payment of 30 cents per month. From these payments, 25 cents per month accrue to the general fund and 5 cents per month accrue to COPE, the political action committee of the AFL-CIO. COPE has been in existence for more than six months. Within the current fiscal year and the two preceding fiscal years, COPE has received payments from more than 100 affiliates of the AFL-CIO, and has made contributions to five or more candidates.

ANALYSIS

Question 1. Is COPE a "broad based political committee"?

The constitution of AFL-CIO directs each affiliate labor organization to make a per capita payment of 30 cents per month to the AFL-CIO. Of this amount, 5 cents per month is directed to COPE, the political action committee of AFL-CIO. Since the pay-

Charles Scully
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ments are made for political purposes, they are ~~/~~ contributions³ to COPE. (Section 82015.)

Section 85102(d) states:

"Broad based political committee" means a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates."

During the current fiscal year, and the two preceding fiscal years, COPE has received contributions from more than 100 affiliates and made contributions to five or more candidates. In addition, it has been in existence for more than six months. Therefore COPE qualifies as a broad based political committee.

Regulation 18502.1 (copy enclosed) details the procedure for a committee to amend its statement of organization to indicate that it has qualified as a broad based political committee. Until the statement of organization is amended, the committee may not make any contributions to candidates in excess of \$2,500 in a fiscal year. (Regulation 18502.1.)

Question 2. If COPE receives a contribution of more than \$2,500 from any affiliated labor organization, is COPE permitted to use the funds in excess of the \$2,500 contribution limit?

Section 85302 states:

No person shall make and no ... broad based political committee ... shall solicit or accept, any contribution or loan from a person which would cause the total amount contributed or loaned by that person to the same ... broad based political

³ Section 82015 defines "contribution" as:

[A] forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

committee ... to exceed two thousand five hundred dollars (\$2,500) in any fiscal year to make contributions to candidates for elective office.

Thus Section 85302 places a limit on contributions when the contributions will be used by the committee to make contributions directly to candidates seeking elective office. It prohibits a committee from soliciting or accepting any contributions in excess of the limits. Therefore, a committee must return any contributions it receives in excess of the limits. Contributions used for the committee's overhead expenses and to make independent expenditures are not limited by Section 85302.

Regulation 18531(a)⁴ (copy enclosed) states that a contribution shall be deemed not to have been accepted if returned within the deadlines specified in the regulation. However, subdivision (d) of Regulation 18531 clarifies that contributions to a political committee which are "earmarked"⁵ for purposes other than making contributions directly to candidates for elective office shall not be considered to be in excess of the limits if the contributions are deposited into a separate account within the deadlines specified in the regulation.

The affiliates of AFL-CIO direct 5 cents per member per month to COPE. The total amount sent by the affiliate, depending on the number of members of the affiliate, may be in excess of the contribution limit of \$2,500 per fiscal year.⁶ If the affiliate

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⁶ It is our understanding that you do not take the position that each member of each affiliate is a separate contributor subject to the contribution limits of Section 85302. In other situations the contribution limits may apply to individual members of local organizations, which are affiliated with state or national organizations, rather than to the affiliates. This will depend upon whether the contributions from individual members are earmarked for the state or national organization. The advice in this letter is based on the specific assumption that the contributions from each member are not earmarked for the state or national organization.

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earmarks the funds in excess of the contribution limits (\$2,500) "for purposes other than making contributions directly to candidates" and if these funds in excess of the limit are deposited in a separate account pursuant to Regulation 18531(d), COPE may use the funds "for purposes other than making contributions directly to candidates." (Regulation 18531.)

Question 3. May COPE use funds on hand on January 1, 1989 to support or oppose candidates for elective office?

Section 85306 states:

Any person who possesses campaign funds on the effective date of this chapter may expend these funds for any lawful purpose other than to support or oppose a candidacy for elective office.

Regulation 18536 (copy enclosed) defines "campaign funds possessed on the effective date of this chapter" as:

(1) All cash and cash equivalents possessed on June 8, 1988, and any other assets purchased thereafter with that cash or cash equivalents, and

(2) Any contributions, cash, cash equivalents, or other assets received or purchased from June 8, 1988, through December 31, 1988, the proceeds thereof, and the rents, issues and profits thereon.

Thus funds possessed by COPE on January 1, 1989 may be used for "any lawful purpose other than to support or oppose a candidacy for elective office." Regulation 18536.2 (copy enclosed) defines the phrases "lawful purpose" and an expenditure "to support or oppose a candidacy for elective office."

In your letter you have referred to a procedure to compare the cash-on-hand on January 1, 1989 against the contributions received to determine if the contributions are within the limits. Regulation 18536.1, adopted by the Commission in November outlined such a procedure to enable some of the funds possessed on January 1, 1989 to be used to support or oppose a candidacy for

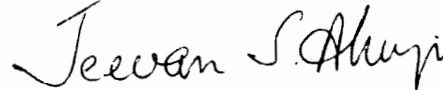
Charles Scully
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elective office.⁷ On February 8, 1989, the Los Angeles County Superior Court ruled the regulation invalid insofar as it allows funds collected prior to the effective date of Proposition 73 to be used now to support or oppose a candidacy for elective office. The Commission has decided to appeal this judgment. However, pending further judicial action or adoption of new regulations by the Commission, COPE may not use funds possessed on January 1, 1989 to support or oppose a candidacy for elective office, but may use those funds for any other lawful purpose.

I trust this letter provides you with the guidance requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

DMG:JA:ld
Enclosures

⁷ Following the procedure, funds that reflected contributions within the limits of Proposition 73 were sometimes referred to as "unrestricted" funds and the balance of the funds on hand were referred to as "restricted" funds. In your letter you have used the term "restricted" funds to include contributions received in excess of the contribution limits after January 1, 1989. That designation is incorrect. The funds possessed on January 1, 1989 may be used for "any lawful purpose other than to support or oppose a candidacy for elective office." (Section 85306.) In specific circumstances, contributions received by a committee in excess of the contribution limits may be used for any purpose "other than making contributions directly to candidates." (Section 85303(c); Regulation 18531(d).)

You mentioned using one bank account into which funds on hand on January 1, 1989 can be deposited and then "'restricted' monies received in the future" can also be deposited. As you can see this would not be appropriate. Funds on hand on January 1, 1989 must be kept in a separate account and no funds should be added to it - it can only be used for "any lawful purpose other than to support or oppose a candidacy for elective office." (Section 85306.) When the funds have been expended, the account should be closed. However, contributions received in the future in excess of the contribution limits, if earmarked for that purpose, can be used for any purpose "other than making contributions directly to candidates". (Regulation 18531(d).)

LAW OFFICES
OF
CHARLES P. SCULLY, INC.
300 MONTGOMERY STREET
SUITE 735
SAN FRANCISCO, CALIFORNIA 94104-1909

FPPC

JAN 30 9 03 AM '89

CHARLES P. SCULLY (1915-1985)
DONALD C. CARROLL
CHARLES P. SCULLY, II

January 27, 1989

TELEPHONE
362-0241
AREA CODE 415

John McLean, Esquire
California Fair Political
Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: California Labor Federation, AFL-CIO
(COPE) - Written Advice Request 88-452

Dear Mr. McLean:

During our telephone conversation of January 26, 1989 you advised me that your duties in regard the above would soon be transferred to Mr. Jeevan Ahuja due to your other current responsibilities.

We are, of course, disappointed that there would appear to be yet another delay in this matter which was first received by the Commission's staff on or about November 28, 1988.

In an attempt to avoid what I would perceive to be a potential additional delay, given Mr. Ahuja's potential lack of knowledge vis-a-vis facts previously presented to you, I am providing the following as a form outline of the facts and our understanding of the appropriate actions which should be taken by our client.

The California Labor Federation, AFL-CIO is a voluntary federation of affiliated labor organizations. There are far in excess of 100 affiliated labor organizations.

The Constitution of the Federation provides that each affiliated union shall make a per capita payment of 30 cents per month. The same Constitution goes on to explicitly state as follows:

"From these payments 25 cents per month shall accrue to the General Fund and 5 cents per month shall accrue to the Fund for the Standing Committee on

John McLean, Esquire
California Fair Political
Practices Commission

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Political Education. These funds shall be segregated and maintained and accounted for separately."

The aforesaid portion of the Constitution has been substantially unaltered at all relevant times. The language has been approved by the affiliates via adoption as part of the Constitution and all affiliated unions have actual knowledge of the aforequoted language.

We have previously advised you that our Request for Advice should not be viewed as seeking advice on behalf of other labor organizations which may have a substantially different structure.

The following reflects my understanding of verbal advice given at various times by various members of the staff of the Commission but which has never been confirmed in writing as requested.

The Committee on Political Education, the sponsored Political Action Committee meets the requirements of a Broad Based Committee pursuant to the provisions of the Proposition and applicable regulations. In particular, the Committee has been in existence for more than six months, has during the current fiscal year and two preceding fiscal years received contributions from more than 100 labor organizations which are defined as each constituting a "person" pursuant to the provisions of Section 85102(b) as contained within the Proposition. In order to utilize the higher contribution levels permitted by Broad Based Committees it is necessary for COPE to notify the Secretary of State of its status as a Broad Based Committee and it is necessary that the Committee continue to meet the statutory and regulatory requirements in each succeeding fiscal year.

In terms of assets in existence as of the effective date of the Proposition, it is necessary for COPE to review assets on hand by comparing the same with the most recently received per capita payments from affiliates. Should this retrospective review process show that any amounts in excess of \$2,500.00

John McLean, Esquire
California Fair Political
Practices Commission

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are attributable to an individual affiliated union's per capita payments, then in that event, the so-called "excess monies" must be segregated from monies within the limitation.

The existing regulations call for the "campaign" monies to be withdrawn and a separate and distinct account established with a committee to be registered under a new identification number.

We have noted that the aforesaid process actually diminishes the ability of the voting population to review the political activities of COPE. In particular it would not be possible for an individual reviewing campaign reports to automatically track the activities if the new committee is the committee which controls the "campaign" funds. Given the foregoing, it is my understanding that it is possible to segregate the "excess" restricted funds to a new bank account and establish a new committee for those restricted monies the same to of course receive a new identification number.

In terms of future contributions we have explained that there may be several extremely large affiliates where the COPE per capita payment would exceed \$2,500.00 per annum. We have further advised that the Federation has historically utilized a lock box procedure whereby per capita payments are received directly by a bank which upon receipt immediately places that portion of the per capita payment attributable to COPE into a separate and distinct account. We have explained that the lock box arrangement provides a high degree of safety as well as creating a readily auditable record of payments received. The Bank has advised that it will not be possible for the Bank to monitor a \$2,500.00 limitation then we have questioned whether or not it would be possible to periodically sweep the COPE account in order to assure any "excess contributions" received might be transferred to the restricted account. It is our understanding that the foregoing is unacceptable to the staff of the Commission and it will be necessary for the Federation to discontinue use of the lock box procedure vis-a-vis those affiliates which may contribute more in COPE per capita payments than \$2,500.00 per fiscal year.

John McLean, Esquire
California Fair Political
Practices Commission

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I would once again stress that we are seeking advice vis-a-vis the existing structural composition of the Federation and COPE and we are not seeking advice relevant to the structure of any other labor organization nor are we seeking advice vis-a-vis potential changes in the existing structural composition of the Federation and COPE.

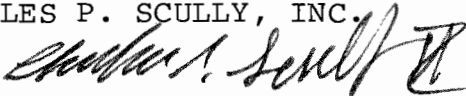
If the aforesaid procedures are acceptable, I would request immediate transmittal of appropriate Forms for the registration of a Committee covering any and all excess monies. Should the foregoing procedures not be acceptable, I would request, at Mr. Ahuja's first convenience, a detailed explanation as to exactly what contrary or additional procedures should be followed as well as transmittal of all appropriate Forms for any and all necessary registrations.

Thank you.

Very truly yours,

LAW OFFICES OF
CHARLES P. SCULLY, INC.

By


Charles P. Scully II

CPSII:bjs
OPE-3-AFL-CIO

cc: Mr. John F. Henning
Mr. Albin J. Gruhn
Mr. Jeevan Ahuja, Attorney

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300 MONTGOMERY STREET
SUITE 735
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Nov 28 9 44 AM '88

CHARLES P. SCULLY (1915-1985)
DONALD C. CARROLL
CHARLES P. SCULLY, II

November 23, 1988

TELEPHONE
362-0241
AREA CODE 415

Ms. Carla Wardlow
California Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: California Labor Federation, AFL-CIO -
Committee on Political Education
(Proposition 73)

Dear Mr. Wardlow:

This will serve as an attempt to confirm our various telephone conversations of November 22 and November 23, 1988 in regard the above.

The Committee on Political Education is, of course, the sponsored Political Action Committee of the California Labor Federation, AFL-CIO. As I explained affiliated labor organizations make per capita payments to COPE at the rate of 5 cents per member per month. The aforesaid Committee has been in existence for more than six months, has during the current fiscal year and two preceding fiscal years received contributions from more than 100 persons and during the same fiscal year has, acting in consort, made contributions to five or more candidates. I believe there is no question that the Committee is a Broad Based Political Committee within the meaning of the Act. It is my understanding that forms have not currently been developed for amendment of existing registration statements to note status as a Broad Based Political Committee. From our discussions it is my understanding that simple correspondence to the Secretary of State noting the fact that the Committee is a Broad Based Political Committee will be sufficient for the time being. It is my understanding that such notice to the Secretary of State must be transmitted prior to any contribution to a candidate subsequent to January 1, 1989.

It is our understanding that under the Proposition, amounts received from an individual affiliate in a particular

Ms. Carla Wardlow
California Fair Political Practices
Commission

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fiscal year cannot exceed \$2,500 for purposes of unrestricted campaign contributions by COPE. Amounts in excess of the \$2,500 plateau may be received from individual affiliates but the same excess amounts are viewed as "restricted" monies which may not be used to support or oppose a candidate within the purview of the proposition. These restricted monies may be used to pay the overhead expenses of the Campaign Fund Committee, for voter registration efforts, for non-partisan get-out-the-vote drives, for contributions or expenditures to support or oppose any candidate for Federal office, any candidate for elected office in a state other than California, and finally any ballot measure other than a measure to recall an elected officer.

While the Proposition itself suggested that "restricted" and "unrestricted" monies could simply be tracked on the books of the Committee, the regulations in fact call for establishment of separate bank accounts for the two types of monies and establishment of separate committees for the two types of monies.

In terms of monies currently held by COPE, it is my understanding, from our conversations, that COPE should compare the monies currently on hand with most recently received contributions until the figure of most recently received contributions matches monies on hand. Should this review process show that more than \$2,500.00 is attributable to an individual affiliate then the excess amount must be treated as "restricted" monies. Under the regulations, the unrestricted monies must be transferred to a new bank account and a separate committee established in regard that account. It is my understanding that you share some of our concerns that this process may be the reverse of the more practical approach, i.e. placing the restricted monies into a new bank account and forming a Committee related thereto, but that you are not aware of any intended change by the Commission in this regard.

Should the aforesaid review process show that no "restricted monies" currently exists in the cash on hand there is no absolute legal requirement to establish a separate committee at this time. I questioned whether

Ms. Carla Wardlow
California Fair Political Practices
Commission

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or not it would be possible, should the review process show no restricted monies currently on hand, to transfer a modest sum to a new bank account, place any "restricted" monies received in the future into the same account and form a new committee related to the account. It is my understanding that there would be no problem with taking the aforesaid action which would be designed as a safeguard to assure that there is no prospective comingling of restricted and unrestricted monies.

It is my understanding that in regard to monies received from affiliates on or after January 1, 1989 the same will be subject to aggregation with contributions received since July 1, 1988 in order to determine whether or not the contribution from a particular affiliate is "restricted monies". It is my understanding that for the current period and future years the measuring period for fiscal year purposes is July 1 through June 30. It is my understanding that under the Proposition there is no actual limit on the amount that may be received in a particular fiscal year from a particular affiliate other than the "restricted" versus "unrestricted" money situation.


This is obviously a complex area and should you believe that I am mistaken in regard to any of my comments above, I would request that you so advise me by the means most convenient to you. I would also appreciate receipt of the amended registration forms and related forms once drafting of those revised forms has been completed.

In closing, I would simply express thanks on behalf of the California Labor Federation, AFL-CIO Committee on Political Education, Executive Secretary-Treasurer Henning and these offices for your kind assistance.

Thank you.

Very truly yours,

LAW OFFICES OF
CHARLES P. SCULLY, INC.

By 
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CHARLES P. SCULLY, II

January 11, 1989

TELEPHONE
362-0241
AREA CODE 415

Certified Mail -
Return Receipt Requested

John McLean, Esquire
California Fair Political Practices
Commission
428 "J" Street, Suite 800
Sacramento, CA 95814

Re: California Labor Federation, AFL-CIO
(COPE) - Written Advice Request 88-452

Dear Mr. McLean:

It is my understanding that some question has arisen as to whether or not the per capita COPE contributions received by COPE from affiliated labor organizations should be viewed as being attributable to the affiliated labor organization or the individual members of the affiliated labor organizations for purposes of limitations applicable to per fiscal year contributions to political committees.

As noted in my correspondence of November 23, 1988 the structure of the California Labor Federation, AFL-CIO is extremely unique, in particular, the Federation is purely an organization of the individual labor organizations and indeed pursuant to the Constitution of the Federation individual members of the affiliated labor organizations have no right to themselves affiliate with the California Labor Federation, AFL-CIO. There are substantially more than 100 affiliated labor organizations and that is the basis of our belief that the Federation's sponsored Committee qualifies as a Broad Based committee given the definition of "person" found within Proposition 73.

Our request for advice is premised solely upon the unique factual setting of COPE. Our request for written advice should in no fashion be viewed as a request for written advice which would cover other labor organizations

John McLean, Esquire
California Fair Political Practices
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which may be structured in a different fashion.

Should you require any further information vis-a-vis the structure of COPE and/or the California Labor Federation, AFL-CIO, please do not hesitate to contact me by the means most convenient to you.

Thank you.

Very truly yours,

LAW OFFICES OF
CHARLES P. SCULLY, INC.

By


Charles P. Scully II

CPSII:bjs
OPE-3-AFL-CIO

cc: Mr. John F. Henning
Mr. Albin J. Gruhn



California Fair Political Practices Commission

March 21, 1988

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committee ... to exceed two thousand five hundred dollars (\$2,500) in any fiscal year to make contributions to candidates for elective office.

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⁶ It is our understanding that you do not take the position that each member of each affiliate is a separate contributor subject to the contribution limits of Section 85302. In other situations the contribution limits may apply to individual members of local organizations, which are affiliated with state or national organizations, rather than to the affiliates. This will depend upon whether the contributions from individual members are earmarked for the state or national organization. The advice in this letter is based on the specific assumption that the contributions from each member are not earmarked for the state or national organization.

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Regulation 18536 (copy enclosed) defines "campaign funds possessed on the effective date of this chapter" as:

(1) All cash and cash equivalents possessed on June 8, 1988, and any other assets purchased thereafter with that cash or cash equivalents, and

(2) Any contributions, cash, cash equivalents, or other assets received or purchased from June 8, 1988, through December 31, 1988, the proceeds thereof, and the rents, issues and profits thereon.

Thus funds possessed by COPE on January 1, 1989 may be used for "any lawful purpose other than to support or oppose a candidacy for elective office." Regulation 18536.2 (copy enclosed) defines the phrases "lawful purpose" and an expenditure "to support or oppose a candidacy for elective office."

In your letter you have referred to a procedure to compare the cash-on-hand on January 1, 1989 against the contributions received to determine if the contributions are within the limits. Regulation 18536.1, adopted by the Commission in November outlined such a procedure to enable some of the funds possessed on January 1, 1989 to be used to support or oppose a candidacy for

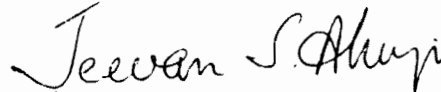
Charles Scully
March 21, 1989
Page 6

elective office.⁷ On February 8, 1989, the Los Angeles County Superior Court ruled the regulation invalid insofar as it allows funds collected prior to the effective date of Proposition 73 to be used now to support or oppose a candidacy for elective office. The Commission has decided to appeal this judgment. However, pending further judicial action or adoption of new regulations by the Commission, COPE may not use funds possessed on January 1, 1989 to support or oppose a candidacy for elective office, but may use those funds for any other lawful purpose.

I trust this letter provides you with the guidance requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

DMG:JA:ld
Enclosures

⁷ Following the procedure, funds that reflected contributions within the limits of Proposition 73 were sometimes referred to as "unrestricted" funds and the balance of the funds on hand were referred to as "restricted" funds. In your letter you have used the term "restricted" funds to include contributions received in excess of the contribution limits after January 1, 1989. That designation is incorrect. The funds possessed on January 1, 1989 may be used for "any lawful purpose other than to support or oppose a candidacy for elective office." (Section 85306.) In specific circumstances, contributions received by a committee in excess of the contribution limits may be used for any purpose "other than making contributions directly to candidates." (Section 85303(c); Regulation 18531(d).)

You mentioned using one bank account into which funds on hand on January 1, 1989 can be deposited and then "'restricted' monies received in the future" can also be deposited. As you can see this would not be appropriate. Funds on hand on January 1, 1989 must be kept in a separate account and no funds should be added to it - it can only be used for "any lawful purpose other than to support or oppose a candidacy for elective office." (Section 85306.) When the funds have been expended, the account should be closed. However, contributions received in the future in excess of the contribution limits, if earmarked for that purpose, can be used for any purpose "other than making contributions directly to candidates". (Regulation 18531(d).)

LAW OFFICES
OF
CHARLES P. SCULLY, INC. • FBOC
300 MONTGOMERY STREET
SUITE 735
SAN FRANCISCO, CALIFORNIA 94104-1509

*11/2 Have oral advice:
He will send written
confirmation of our review
I will then
provide written
confirmation*
Nov 28 9 44 AM '88

CHARLES P. SCULLY (1915-1985)
DONALD C. CARROLL
CHARLES P. SCULLY, II

November 23, 1988

TELEPHONE
362-0241
AREA CODE 415

Ms. Carla Wardlow
California Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: California Labor Federation, AFL-CIO -
Committee on Political Education
(Proposition 73)

Dear Mr. Wardlow:

This will serve as an attempt to confirm our
various telephone conversations of November 22 and
November 23, 1988 in regard the above.

The Committee on Political Education is, of
course, the sponsored Political Action Committee of
the California Labor Federation, AFL-CIO. As I explained
affiliated labor organizations make per capita payments
to COPE at the rate of 5 cents per member per month. The
aforesaid Committee has been in existence for more than
six months, has during the current fiscal year and two
preceding fiscal years received contributions from more
than 100 persons and during the same fiscal year has,
acting in consort, made contributions to five or more
candidates. I believe there is no question that the
Committee is a Broad Based Political Committee within
the meaning of the Act. It is my understanding that
forms have not currently been developed for amendment
of existing registration statements to note status as
a Broad Based Political Committee. From our discussions
it is my understanding that simple correspondence to the
Secretary of State noting the fact that the Committee is
a Broad Based Political Committee will be sufficient for
the time being. It is my understanding that such notice
to the Secretary of State must be transmitted prior to
any contribution to a candidate subsequent to January 1,
1989.

It is our understanding that under the Proposition,
amounts received from an individual affiliate in a particular

Ms. Carla Wardlow
California Fair Political Practices
Commission

Page Two
November 23, 1988

fiscal year cannot exceed \$2,500 for purposes of unrestricted campaign contributions by COPE. Amounts in excess of the \$2,500 plateau may be received from individual affiliates but the same excess amounts are viewed as "restricted" monies which may not be used to support or oppose a candidate within the purview of the proposition. These restricted monies may be used to pay the overhead expenses of the Campaign Fund Committee, for voter registration efforts, for non-partisan get-out-the-vote drives, for contributions or expenditures to support or oppose any candidate for Federal office, any candidate for elected office in a state other than California, and finally any ballot measure other than a measure to recall an elected officer.

3
are these
restricted:
Unkown
so far.

\$18 - Admin

While the Proposition itself suggested that "restricted" and "unrestricted" monies could simply be tracked on the books of the Committee, the regulations in fact call for establishment of separate bank accounts for the two types of monies and establishment of separate committees for the two types of monies.

& overhead

→ Correct.

In terms of monies currently held by COPE, it is my understanding, from our conversations, that COPE should compare the monies currently on hand with most recently received contributions until the figure of most recently received contributions matches monies on hand. Should this review process show that more than \$2,500.00 is attributable to an individual affiliate then the excess amount must be treated as "restricted" monies. Under the regulations, the unrestricted monies must be transferred to a new bank account and a separate committee established in regard that account. It is my understanding that you share some of our concerns that this process may be the reverse of the more practical approach, i.e. placing the restricted monies into a new bank account and forming a Committee related thereto, but that you are not aware of any intended change by the Commission in this regard.

either way.

Should the aforesaid review process show that no "restricted monies" currently exists in the cash on hand there is no absolute legal requirement to establish a separate committee at this time. I questioned whether

Ms. Carla Wardlow
California Fair Political Practices
Commission

Page Three
November 23, 1988

or not it would be possible, should the review process show no restricted monies currently on hand, to transfer a modest sum to a new bank account, place any "restricted" monies received in the future into the same account and form a new committee related to the account. It is my understanding that there would be no problem with taking the aforesaid action which would be designed as a safeguard to assure that there is no prospective comingling of restricted and unrestricted monies.

It is my understanding that in regard to monies received from affiliates on or after January 1, 1989 the same will be subject to aggregation with contributions received since July 1, 1988 in order to determine whether or not the contribution from a particular affiliate is "restricted monies". It is my understanding that for the current period and future years the measuring period for fiscal year purposes is July 1 through June 30. It is my understanding that under the Proposition there is no actual limit on the amount that may be received in a particular fiscal year from a particular affiliate other than the "restricted" versus "unrestricted" money situation. *Correct.* *Correct.*

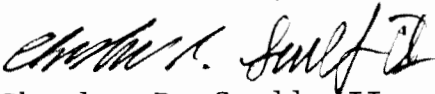
This is obviously a complex area and should you believe that I am mistaken in regard to any of my comments above, I would request that you so advise me by the means most convenient to you. I would also appreciate receipt of the amended registration forms and related forms once drafting of those revised forms has been completed.

In closing, I would simply express thanks on behalf of the California Labor Federation, AFL-CIO Committee on Political Education, Executive Secretary-Treasurer Henning and these offices for your kind assistance.

Thank you.

Very truly yours,

LAW OFFICES OF
CHARLES P. SCULLY, INC.

By 
Charles P. Scully II

CPSII:bjs
OPE-3-AFL-CIO

cc: Mr. John F. Henning
Mr. Albin J. Gruhn

TELEPHONE ADVICE

Atty: jm

Date: _____

Requestor: Scully

Tele: _____

Question: \$1,000 fundraiser for Sen. Garamendi.

I'll call back in next couple days.

- Can new committee be either restricted or unrestricted committee?

Advice: _____

Regulations: _____ Act: _____

Opinions: _____ Guide to PRA: _____

Advice Letters: _____ 84308 Pamphlet: _____

Other: _____

LAW OFFICES
OF
CHARLES P. SCULLY, INC.
300 MONTGOMERY STREET
SUITE 735
SAN FRANCISCO, CALIFORNIA 94104-1909

FPPC
JAN 17 3 59 PM '89

CHARLES P. SCULLY (1915-1985)
DONALD C. CARROLL
CHARLES P. SCULLY, II

TELEPHONE
362-0241
AREA CODE 415

January 12, 1989

John McLean, Esq.
California Fair Political
Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: California Labor Federation, AFL-CIO
(COPE) - Written Advice Request 88-452

Dear Mr. McLean:

This will serve to confirm our telephone conversation of January 12, 1989 in regard the above. As noted in our original correspondence with Ms. Carla Wardlow affiliated labor organizations make per capita payments to COPE at the rate of 5¢ per member per month. I also explained that given labor law principles a member of a local union may object to any portion of his or her dues being used for political purposes and in such instances no payment of the 5¢ per capita payment is required on behalf of such a member.

Article XVIII of the constitution of the California Labor Federation, AFL-CIO provides in Section 2 as follows:

"Any member (sic of an affiliated labor organization) who disagrees with the Federation endorsement of state candidates or statewide measures may make a written request to the Secretary-Treasurer, prior to October 30 of the given election year, to refund to his union that portion of his per capita tax which has been allocated to the Committee on Political Education, not to exceed the prior 24 months. Upon receipt of such written request, the Secretary-Treasurer shall make such refund."

Pursuant to the foregoing an individual union member who objects to the use of his dues money for the political activities of the California Labor Federation, AFL-CIO COPE has the ability to assure the 5¢ per capita payment is not made prospectively by filing an objection with the union and may receive

John McLean, Esq.
January 12, 1989
Page Two

a refund of up to 24 months of per capita payment retroactively by filing a request for refund as noted above.

It is my understanding that the Commission is now considering taking the position that when an amount is earmarked, such as in the case of COPE and the individual has an opportunity to avoid payment, such as discussed above, then in that event the mere fact the contribution itself was from the local union will not change the fact that the contribution is viewed as being attributed to the individual member.

As we discussed if the Commission is prepared to take the aforesaid position on "earmarking" I would request that the foregoing information be considered along with our original Request for Advice which of course merely reflected what we had been told by Ms. Wardlow in November of this year. If in fact the Commission is prepared to take such a position the entire problem vis-a-vis the \$2,500 limitation of contributions received is eliminated for my client. Such a position would also resolve any and all problems vis-a-vis review of monies on hand for my client given the fact that no monies on hand reflect more than 60¢ per year per individual member of an affiliated local union.

It is my understanding that the formal written advice we will eventually receive on this matter will take into account the foregoing and I would certainly appreciate a response at your convenience in order that my client might resume its normal political activities.

Thank you.

Very truly yours,

LAW OFFICES OF
CHARLES P. SCULLY, INC.

By


Charles P. Scully II

CPSII:mk
OPE 3 AFL-CIO

cc: John F. Henning
Albin J. Gruhn

LAW OFFICES
OF
CHARLES P. SCULLY, INC.
300 MONTGOMERY STREET
SUITE 735
SAN FRANCISCO, CALIFORNIA 94104-1909

FPPC

JAN 30 11 45 AM '89

CHARLES P. SCULLY (1915-1985)
DONALD C. CARROLL
CHARLES P. SCULLY, II

January 24, 1989

TELEPHONE
362-0241
AREA CODE 415

Jeevan Ahuja, Esquire
California Fair Political Practices
Commission
428 J Street, Suite 800
Sacramento, CA 95804-0807

Re: California Labor Federation, AFL-CIO
(COPE) - Written Advice Request 88-452

Dear Mr. Ahuja:

This will simply confirm our telephone
conversation of January 24, 1989 in regard the above.

In particular I explained that we had a request
pending under the above referenced number. On January 12,
1989 we transmitted additional information to Mr. McLean
in regard that request. On January 23, 1989 we received
a brief response from Ms. Donovan which notes that our
January 12, 1989 correspondence was received by the
Commission on January 13, 1989, had been assigned to
you and had been assigned written advice request number
89-028.

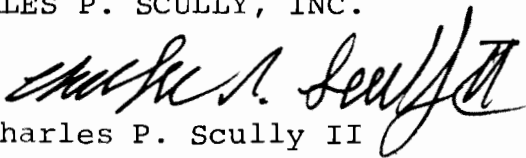
As I explained during our telephone conversation
I am concerned that what is a single request in regard a
single client may have been inadvertently bifurcated by
the Commission. It is my understanding that you will be
discussing the matter with Mr. McLean and Ms. Donovan.

Thank you for your courtesy and cooperation in
this matter.

Very truly yours,

LAW OFFICES OF
CHARLES P. SCULLY, INC.

By


Charles P. Scully II

CPSII:bjs
OPE-3-AFL-CIO

cc: Mr. John F. Henning
Mr. Albin J. Gruhn



California Fair Political Practices Commission

December 5, 1988

Charles P. Scully
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1909

Re: 88-452

Dear Mr. Scully:

Your letter requesting advice under the Political Reform Act was received on November 28, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
Diane M. Griffiths
General Counsel

DMG:plh



California Fair Political Practices Commission

January 23, 1989

Charles P. Scully, II
Charles P. Scully, Inc.
300 Montgomery St., Suite 735
San Francisco, CA 94104-1909

Re: Letter No. 89-028

Dear Mr. Scully:

Your letter requesting advice under the Political Reform Act was received on January 13, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
Acting General Counsel

KED:plh